**HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI**
**AND**
**HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY**

**Writ Appeal No.454 of 2007**

**Between:**

M. Subrahmanyam

… Appellant

**And**

The Union of India, represented by its Secretary,
Ministry of External Affairs, Patiala House,
Annexe, Tilak Marg, New Delhi 110 001 and another

… Respondents

**::JUDGMENT::**

Counsel for the appellant : Shri B. Adinarayana Rao

Counsel for the respondents : Shri A. Rajasekhar Reddy,
Assistant Solicitor General

**June 11, 2007**

**Per G.S. Singhvi, CJ**

Whether the passport of the appellant could be impounded by invoking the provisions of Section 10 (3) (e) of the Passports Act, 1967 (for short, 'the Act') and whether the learned Single Judge was justified in sustaining order dated 10-09-2004 passed by the Regional Passport Officer, Secunderabad (respondent No.2 herein) under Section 10 (3) (e) of the Act by assuming that the power to impound the passport could legitimately be exercised in the appellant's case under Section 10 (3) (h) of the Act are the questions which arise for determination in this appeal filed under Clause 15 of the Letters Patent.

There is no dispute between the parties that the appellant is holding passport bearing No. E4055697, which is valid up to 18.12.2012; that on a complaint made by A.P. Transco, the sole buyer of the electricity produced by M/s Spectrum Power Generation Limited alleging that the Directors of M/s Spectrum Power Generation Limited had over run the cost of the project, Crime No.21 of 2004 was registered with the police, C.I.D., Hyderabad for offences under Sections 403, 405, 408, 409, 420, 468 and 471 of the Indian Penal Code and the appellant along with his father and elder brother have been shown as accused; that they filed Criminal Miscellaneous Petition No.2715 of 2004 in the Court of Metropolitan Sessions Judge, Hyderabad for grant of anticipatory bail; that by an order dated 19.10.2004, the learned Metropolitan Sessions Judge allowed the application and that Criminal Petition No.5027 of 2004 filed by the State of Andhra Pradesh against that order was dismissed by a learned Single Judge of this Court on 20.12.2004.

It is also not in dispute that during the pendency of investigation of Crime No.21 of 2004, respondent No.2 issued notice dated 15-07-2004 to the appellant under Section 10 (3) (e) of the Act to show cause against the proposed impounding of his passport; that the appellant filed reply dated 26-07-2004 to controvert the allegation set out in the show cause notice by stating that no case is pending against him in the criminal court and that vide order dated 10.09.2004, respondent No.2 impounded the passport of the appellant.

The learned Single Judge held that respondent No.2 could not have exercised power under Section 10 (3) (e) of the Act because the case registered against the writ petitioner (the appellant herein) was not pending before a criminal court, but sustained the action taken by respondent No.2 by observing that the power to impound passport can be traced in clause (h) of Section 10 (3).

We have heard Shri B. Adinarayana Rao, learned counsel for the appellant and Shri A. Rajasekhar Reddy, learned Assistant Solicitor

General. We have also gone through the brief note of day to day proceedings prepared by Shri G.L. Harishchandra, Deputy Superintendent of Police, C.I.D who is presently incharge of investigation of the crime registered against the appellant. The statement produced by Shri G.L. Harishchandra shows that the case registered against the appellant has so far not reached the stage of challan. It is thus clear that no case is pending against the appellant before a criminal court in India. As a corollary, it must be held that respondent No. 2 could not have invoked Section 10 (3) (e) of the Act for impounding the passport of the appellant. The question, which remains to be considered, is whether order dated 10.09.2004 can be sustained with reference to Section 10 (3) (h) of the Act. That section reads as under:

> " **10. Variation, impounding and revocation of passports and travel documents:-**
>
> 10 (3) The passport authority may impound or cause to be impounded or revoke a passport or travel document.
>
> (h) If it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force **or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court** and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.
>
> ....."

A reading of the plain language of the above re-produced provision makes it clear that the passport can be impounded, if a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by the Court under any law for the time being in force or if an order

prohibiting the departure from India of the holder of the passport or other travel document has been made by any such Court.

It is not the case of the respondents that any warrant or summon has been issued against the appellant for his arrest or appearance before any Court of law or an order prohibiting his departure from India has been passed. A reading of order dated 19-10-2004 passed by Metropolitan Sessions Judge in Crl.M.P No. 2715 of 2004 shows that while granting anticipatory bail to the appellant, the learned Metropolitan Sessions Judge imposed the following condition:

> "The petitioners are directed to surrender their passports if any to the concerned C.I.D. police. On such deposit of the passport if the petitioners require said passports in future they can take the same by approaching the concerned Court. The petitioners also have to cooperative with the Investigating Officer during the course of investigation. The petitioners have to comply with the provisions of Section 438 Cr.P.C."

In our considered view, the aforesaid condition cannot by any stretch of imagination be construed as an order prohibiting the appellant's departure from India. Therefore, the order impugned in the writ petition cannot be sustained by invoking Section 10 (3) (h) and the contrary view taken by the learned Single Judge is legally unsustainable.

We are further of the view that once notice was issued to the appellant proposing to take action under Section 10 (3) (e) of the Act, he could only show cause with reference to the reason incorporated in the notice. This means that the appellant did not have opportunity to controvert the show cause notice which could be issued under Section 10 (3) (h) of the Act. Therefore, order dated 10.09.2004 is liable to be nullified on the additional ground of violation of the rules of natural justice.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the writ petition filed by the appellant is

allowed. As a sequel to this, order dated 10.09.2004 issued by respondent No.2 is quashed.

As a sequel to disposal of the appeal, WAMP No.848 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

**G.S. SINGHVI, CJ**

**C.V. NAGARJUNA REDDY, J**

June 11, 2007

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